HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 266 of 2006

1. Virendra S/o Shri Baljeet
2. Pramod Kumar Tyagi
   S/o Shri Janeshwar Prashad Tyagi
3. Ravindra S/o Shri Omdutt
   All R/o village Tansipur
   P.S. Manglaur
   District Haridwar .....Applicant

Versus

1. State of Uttaranchal
2. Judicial Magistrate, Roorkee
   District Haridwar ...Respondents

Sri Rajendra Singh learned counsel for the applicants.
Sri Nandan Arya learned A.G.A. for the State.

Hon'ble J. C. S. Rawat, J.

1. The petition under section 482 Cr.P.C. has been filed for quashing the entire criminal proceedings and order dated 13.03.2006 passed by the Judicial Magistrate, Roorkee, District Haridwar in criminal case No.2322/2005 State Vs. Yogesh & others under section 147, 341 IPC and section 7 of the Criminal Law Amendment Act.

2. The crux of the matter is that a chargesheet was submitted before the court below under section 147, 341 IPC and section 7 of Criminal Law Amendment Act against 11 accused persons mentioned in the chargesheet with parentage. The name of the present applicants was also shown in the chargesheet, but their parentage and addresses have not been shown in the chargesheet. After submission of the chargesheet, the Magistrate issued the summons against the accused persons. The Magistrate issued baliable warrant against

Virendar, Pramod and Ravindra. But, these bailable warrants have been returned with the report that no persons of such names and parentage were living in the addresses shown in the warrant. Thereafter, the Magistrate directed the I.O. to explain as to how he has stated these names in the chargesheet. In pursuance of the order of the Magistrate, the I.O. has submitted his report dated 13.3.2006. After conducting the inquiry with the family members of the accused and Gram Pradhan and looking into the voter list, the I.O. has submitted the names and addresses of the accused persons which is as follows:-

(i) Vijendar @ Virendar S/o Brahamjeet @ Baljeet
(ii) Pramod S/o Atmaram @ Janeshwar
(iii) Ravindra S/o Nakli Singh @ Omdutt
All R/o village Ransipur, P.S. Manglaur, District Haridwar

3. The I.O. has also tendered the apology before the court below and stated that the surname of the accused persons have left out in the chargesheet already submitted by him. After receiving the said report, the Magistrate has passed the impugned order dated 13.03.2006 by which the non-bailable warrants were issued against the applicants by showing the name, parentage and address. Feeling aggrieved by this, the present petition has been filed.

4. It was contended on behalf of the applicants that there is a question of identify and till the identity is not established the applicants-accused cannot be tried by the court. It was further contended that it was obligatory on the part of the I.O. either to conduct further investigation with the permission of the court with regard to the identify of the accused. Perusal of the

record reveals that there is some discrepancies with regard to the identify of the accused. The Magistrate has an option to direct the I.O. on his request or suo-moto for further investigation and to submit the correct report. The Magistrate has not taken the said recourse and as such the order of the Magistrate is bad in law.

5. In view of the above, I am of view that the Magistrate should have sent matter to the police for further investigation as to whether these three persons have participated in the crime or not. Thereafter, the I.O. should have further investigated the matter and thereafter the I.O. should have submitted the report.

6. In view of the foregoing discussion, I am of the view that the cognizance order against the present applicants, namely Virendar, Pramod and Ravindra is liable to be quashed at this stage. Therefore, the cognizance order passed by the Magistrate is quashed only against the present applicants, namely Virendar, Pramod and Ravindra.

7. The case is remitted back to the learned Magistrate, who will pass the appropriate order in the light of the observations made above.

8) The petition is disposed of accordingly. All the pending miscellaneous application(s) in this case, if any, shall stand disposed of accordingly.

(J.C.S. Rawat, J.)

Dated 26.04.2006

LSR